By comparing the features of several outlines, students learn which features are valuable in an outline and which features require an upgrade.

**The Side-by-Side Comparison Shopping Method**

I begin by asking students, in preparation for class, to read a sample of an effective office memo. During class, we examine its structure together. We identify the parts of the organizational paradigm: Conclusion, Rule, Explanation of Rule, Analysis, Conclusion (CREAC) in my class, and we pay particular attention to the composition of the explanation section. Although the goal of the day’s class is to teach outlining, I have found that working backwards from the final product provides necessary context for the sample outlines to follow. When I have attempted to work forward from the outlines to the final memo, students have become confused by the substance of the law being outlined and have been less able to absorb the intended lesson about structure. Beginning with the final memo removes this substantive barrier and frees students to concentrate on the organizational lesson at hand.

After reading the memo and parsing it in this way, I ask my students to imagine that they are preparing for a final exam in which they will be asked to apply the governing rule from the memo to a new set of facts. I tell them that they can take with them into the exam only one of three outlines of the law. Then I hand out three outlines and ask the students to comparison shop. Each outline begins with the governing rule, and in each outline, the rule is the same. Any rule can be used for this exercise, but for purposes of illustration, I will use the rule regarding the first element of California’s intrusion upon seclusion tort—intrusion into a private place, conversation, or matter:

1. To establish the first element of invasion of privacy by intrusion, the plaintiff must show that the defendant penetrated a zone of physical or sensory privacy surrounding the plaintiff. *Shulman.* The element is proven only if the plaintiff had a

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1. Because outlines allow a writer to focus on ideas and large-scale organization by freeing them from small-scale concerns like word choice, writing in complete sentences, and transitions, they can be challenging documents for students to understand standing alone. Outlines, after all, are documents for the eyes of the writer, not the reader.

2. The cause of action for invasion of privacy by intrusion has two elements: (1) intrusion into a private place, conversation, or matter; and (2) in a manner highly offensive to a reasonable person.
subjective expectation of privacy of seclusion or solitude in the place, conversation, or matter and the expectation was objectively reasonable. *Id.*

The differences in the outlines occur in the explanation of the rule. The first outline is "organized" by case:


d. Photo of couple with their arms romantically around each other while at a public ice cream store in the farmer's market. Held, no intrusion. *Gill.*


f. Recording by journalist of internal office conversations that could be overheard by co-workers but not the public. Held, intrusion. *Sanders.*

The second outline is organized into binary categories—instances in which the element was established and instances in which it was not:

a. Held – intrusion occurred

i. Observation of breast exam in examination room at physician's office. *Sanchez-Scott*


iii. Clandestine photography and recording of private person's activities in his home den. *Dietemann.*

iv. Recording by journalist of internal office conversations that could be overheard by co-workers but not the public. *Sanders.*

b. Held – intrusion did not occur

i. Recording of sales pitch in a crowded restaurant. *Wilkins.*

ii. Photo of couple with their arms romantically around each other while at a public ice cream store in the farmer's market. *Gill.*

The final outline is organized by principle:

a. Intrusion into a private place or matter is not established when the plaintiff has merely been observed, or even photographed or recorded, in a public place.

i. Recording of sales pitch in a crowded restaurant. *Wilkins.*

ii. Photo of couple with their arms romantically around each other while at a public ice cream store in the farmer's market. *Gill.*

b. On the other hand, intrusion is established when the plaintiff has been observed in a space subject to restricted access and limited view, and reserved for inherently personal acts.

i. Observation of breast exam in examination room at physician's office. *Sanchez-Scott.*

ii. Clandestine photography and recording of private person's activities in his home den. *Dietemann.*

c. Yet privacy is not a "binary all-or-nothing characteristic." *Sanders.* Visibility to some people does not remove the right to remain secluded from others. *Id.*

i. Recording by journalist of internal office conversations that could be overheard by co-workers but not the public. *Sanders.*


After spending some in-class time independently reviewing the outlines, students overwhelmingly choose to bring the principle-based outline with them into the imaginary final exam.
By placing students in an information consumer role that they are familiar with, students are better able to appreciate the needs of other similarly situated consumers—specifically, readers of legal memos.

One of the benefits of this exercise is that many students are able to see their own outlining efforts as more akin to the case-based or binary-category outlines than to the most effective outline. Before I developed the side-by-side comparison method, I used to hand out only the effective outline as a sample. But students struggled to recognize when their own outlines did not achieve the principle-based organization of the sample. By pairing an effective sample with one or more less effective ones, students get the message that simply because two outlines share numbering and lettering style doesn’t mean they are equally useful.

Because I generally teach this outlining class when students are beginning a new writing assignment, I emphasize that if they have created an outline that looks like outline 1 or outline 2, they needn’t throw it away and begin from scratch. I tell them that both of the less effective outlines can play a role in the prewriting process; they just aren’t ready to serve as drafting templates for the explanation section of a memo. Like a memo, which will go through a series of drafts before it is complete, an outline too may have a series of drafts; it may begin as a place to dump research results (outline 1), then serve as a place to check those results for completeness (outline 2), and finally evolve into a place where precedent is ordered by principle (outline 3).

Indeed, when I cover research strategies, I encourage my students to include both “yes” cases and “no” cases in their research results because a strong explanation section often establishes a continuum—explaining circumstances in which the element will be established and circumstances in which it will not. These results naturally translate themselves into a binary outline of the law. However, I tell my students that, while binary categories are useful in the early research stages of a legal problem, they are usually too simplistic to effectively explain the law to the reader of a memo. Instead, the reader needs smaller categories that reflect the nuances of the rule to be applied.

By comparing outline 2 with outline 3 in class, students can visualize how cases should be slotted underneath of principles rather than the other way around. Thus, the basic template for an outline of the “E” in CREAC looks like this:

1. Rule
   a. First principle explaining how to apply the rule
      i. Case 1 illustrating principle
      ii. Case 2 illustrating principle
      iii. (Etc. until rule is adequately illustrated)
   b. Second principle explaining how to apply the rule
      i. Case 1 illustrating principle
      ii. Case 2 illustrating principle
      iii. (Etc. until rule is adequately illustrated)
   c. (Etc. until finished explaining how to apply the rule)

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3 Christine Coughlin et. al, *A Lawyer Writes* 110 (Carolina Academic Press 2008) (referring to the continuum as “parameters of behavior”).
After we discuss each of the outlines and extrapolate this template, I have students return to the completed memo with which we began class. I ask them to compare outline 3 to the explanation section of that memo. With minimal prodding from me, students are able to see that each of the principles carved out in the outline have evolved into thesis sentences for each of the paragraphs in that section. This concrete example of the direct connection between outline and memo helps motivate students to engage in the “extra” step of outlining before writing.

4 My students learn to refer to these sentences as “hooks.” Id. at 104.

At the end of class, students leave grateful for the outline template and with a clearer pathway from research to final product. And I leave looking forward to reading more principled explanation sections.

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Another Perspective

“Unlike more traditional role playing exercises, this technique does not attempt to insert a false memory into the minds of the student witnesses. Instead, it uses the students’ actual recollection of an experience that almost all law students share—watching the movie ‘The Wizard of Oz.’ In this exercise, Dorothy (in the person of a series of students selected from the class) takes the stand and is asked questions by the remaining students. The instructor shows the student asking questions (and the remaining students) a series of Fact Statements, each consisting of several facts that the student attorney should attempt to elicit from ‘Dorothy.’

As this exercise progresses, students see themselves and other students struggle to word their questions to obtain the desired testimony. They see the witness answer questions correctly, incorrectly, and not at all (i.e., ‘I do not know’ or ‘I do not remember’). Most of the students who play the role of Dorothy are not very strong witnesses, because they have not seen the film for many years. As the student attorneys observe witnesses having problems, they start to develop strategies for handling this courtroom reality.

Eventually, a student who was assigned the task of viewing the film the previous evening takes the stand as Dorothy, and the students see that having a witness with a strong recollection makes their job easier. They quickly discover, however, that even a witness with a strong memory experiences and causes problems while testifying, especially when the attorney has not had the chance to prepare the witness before her testimony.

The remainder of this section will describe the procedures for this exercise. It is designed to be an introductory exercise that gives students their first experience in questioning witnesses, not an intermediate or advanced drill for students who have gained questioning experience elsewhere. Fortunately, it requires very little advance preparation, so it can be used early in the semester.”